THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.26827 OF 1999

Date: 09th October 2006

Between:
P.Shanker, son of Abbayya,
aged 33 years, Occ. Agril. Resident of
Kurnapally (v) of Yedapally R.M, Nizamabad
District.

…. Petitioner.

And

1. Primary Agricultural Co-op. Credit Society
   (P.A.C.C.S) Kurnapally, Yedapally R.M,
   Nizamabad District and 2 others.

…. Respondents.

* * *

ORDER:

This writ petition is filed being aggrieved by the order and decree dated 12th December 1995 made in C.T.A.No.37 of 1985 on the file of the District Munsif at Bodhan, wherein proceedings of the third respondent under Section 71(2) of A.P. Cooperative Societies Act, 1964 (for short 'the Act') dated 29.10.1985 fixing liability on the appellant to pay an amount of Rs.49, 984-15 paise, was confirmed.

2. It appears that the petitioner was president of the first respondent society. The society had obtained a certificate under Section 71 of the Act and the authority had fixed the liability of the

petitioner at Rs.49,984-15 paise. In fact, a memo was filed on behalf of the petitioner on 07.4.1992 along with two receipts showing that the petitioner has already paid Rs.24,850/- to the society and the same was paid to the Director of the bank. Therefore, the petitioner claimed that the liability fixed on him is not proper. Further, he has stated that for an amount of Rs.10,773-45 paise and Rs,.8,360/- fertilizers were distributed among the farmers as per the resolution of the managing committee. Since he had taken responsibility of collecting those dues, the liability is fixed on the president, the petitioner herein.

3. Insofar as Rs.24,850/- is concerned two receipts were exhibited by the petitioner on 07.4.1992. To whom it was paid, how it was paid, whether it was paid or not, were not at all discussed by any of the authorities. Further, insofar as fertilizers given on credit basis to the members of the society was also not discussed. The petitioner has simply stated that in view of the resolution passed by the managing committee of the society, the remaining fertilizers, which were getting damaged, were distributed on credit basis and he had taken responsibility of the same as president, but not as an individual.

4. As soon as his term is over, the petitioner ceased to be the president of the society. But still without showing that the society could not find the creditors or they were not able to recover these amounts in spite of best efforts made by it, therefore, the liability fixed on the society, is not their case. In the impugned proceedings nothing is discussed as to this aspect. On the other hand, in the proceedings under Section 71 of the Act it refers to

the fact that in the managing committee it was resolved to give fertilizers to 17 members worth Rs.10,573-55 paise on credit. Further, in view of the resolution fertilizers distributed among 8 other members. Whether any efforts were made by the society for recovering the said amounts from those members was not stated. Except saying that those amounts are recoverable and as per the normal business of the society no credit sales are permitted except in cash and kind component loan sanctioned by the bank, in the resolution passed by the society its implications whether those fertilizers were distributed among the members of the society on credit basis or not, if distributed, to whom it was distributed and what are the efforts made by the society in recovering the said amounts, are all not known.

5. Under those circumstances, I am of the opinion that the impugned order passed by the Tribunal confirming the orders passed by the third respondent is in gross violation of the principles of natural justice apart from the procedure known to law, therefore, the same is liable to be set aside and accordingly set aside. However, this will not preclude the authorities from raising any dispute as available under law for recovery of any amounts either from the petitioner or from any other person fixing liability under the Act.

6. The writ petition is accordingly allowed. No costs.

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C.V.RAMULU, J.

Date: 09th October 2006.
BSB